

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11154 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KANJIBHAI MALABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR SAMIR DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/10/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Ms. Banna Datta on behalf of petitioner for Advocate Ms. K.U. Mishra and learned A.G.P. Mr. Samir Dave for respondent Nos. 1 to 3.

2. The Detention order passed by the respondent No. 2 - Police Commissioner, Rajkot City, Rajkot, against the petitioner in exercise of powers conferred under Sec. 3 (1) of Gujarat Prevention of Anti-social Activities Act, 1985 ('PASA' for short), is challenged in the present petition under Article 226 of the Constitution of India.

3. The grounds of detention supplied to the

petitioner under Sec. 9 (1) of PASA, is produced at Annexure 'B', on running page 15 of the compilation. Perusal of the said grounds indicate that seven criminal cases under Prohibition Act, are registered against the petitioner at Rajkot City, 'B' Division Police Station, on different dates from 6/6/98 to 10/12/98. That in each case, countrymade liquor has been seized from the possession of the petitioner as per particular stated in the grounds. That all the said cases are pending for trial in the Court. The grounds of detention further indicate that two witnesses on assurance of anonymity have furnished information against the alleged anti-social activity of the petitioner vide their statement dtd. 14/12/98 and 15/12/98. That on the basis of said material of police papers of abovestated seven cases and statements of anonymous witnesses, respondent No. 2 - Police Commissioner, Rajkot City, Rajkot, has concluded that the petitioner is a 'bootlegger' within the meaning of Sec. 2 (b) of PASA. That resort to enforcement of general law, is insufficient to prevent the petitioner from continuing his nefarious anti-social activity and as such, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds.

It has been contended on behalf of the petitioner that vide representation dtd. 30th July, 1999, the petitioner - detenu requested Minister of Home, State of Gujarat, to arrange to supply the report of FSL and/or Chemical Analyzer in respect to registered cases and statement of witnesses recorded by the investigating officer, so as to enable the petitioner to make effective representation. That the said representation was received by the concerned department - respondent NO. 1 on 31st July 1999, however, no reply was sent till 8th September, 1999. That on 8th September, 1999, communication was addressed to the detenu, as per copy produced on record, stating that report of Forensic Science Laboratory in respect to four registered cases, are supplied vide page Nos. 1 to 22 with the communication. It is further stated that proposal being secret and the said material having not been relied on in the grounds of detention, they cannot be supplied. It is urged on behalf of the petitioner that the respondents have failed to supply the necessary documents which are vital to make effective representation against the detention of petitioner, are partly supplied as late as about one month and eight days and has failed to supply the remaining documents. That thereby, the State Govt. as well as the detaining authority - respondent No. 2 ,

have committed breach of the constitutional imperative guaranteed under Article 22 (5) of the Constitution and as such the impugned order of detention has become illegal.

5. Learned A.G.P. Mr. Samir Dave attempted to salvage the issue contending that the documents which are claimed by the petitioner through representation, have not been relied on while formulating the grounds of detention by respondent NO. 2. That in absence of any prejudice shown on behalf of the petitioner, it cannot be said that non-supply of documents claimed, amounts to breach of constitutional imperative.

6. It is difficult to uphold the submission urged on behalf of the respondents. That proposition of law is well settled by the various pronouncements of Supreme Court as well as this Court, that report of FSL or Chemical Analyzer in respect to material seized during the criminal cases registered against a person under the Prohibition Act, is a vital document for the detenu to make effective representation. Furthermore, the bunch of documents supplied to the petitioner disclose that such documents were available with the sponsoring authority even on the date of order of detention, despite the said fact, representation dtd. 30th July 1999, has not been attended properly by the concerned department till 8th September, 1999 and as such inordinate delay in responding to the representation of the petitioner-detenu has remained unexplained and no affidavit of either of respondents has been produced. Under the circumstances, the contention urged on behalf of the petitioner, requires to be accepted and the petition deserves to be allowed.

7. On the basis of the foregoing discussion, the impugned order dtd. 17/12/98 passed by the respondent NO. 2 - Police Commissioner, Rajkot City, Rajkot, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Kanjibhai Malabhai Solanki is ordered to be set at liberty forthwith, if not required in any other case.

Rule to that extent is made absolute.

Rafik*